

# October 23, 2012



## California First-Year Law Students' Examination

**Answer all four (4) questions.**

**Time allotted: 4 hours**

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and fact upon which the case turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other.

Your answer should evidence your ability to apply the law to the given facts and to reason in a logical, lawyer-like manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles. Instead, try to demonstrate your proficiency in using and applying them.

If your answer contains only a statement of your conclusions, you will receive little credit. State fully the reasons that support your conclusions, and discuss all points thoroughly.

Your answer should be complete, but you should not volunteer information or discuss legal doctrines which are not pertinent to the solution of the problem.

You should answer the questions according to legal theories and principles of general application.

## QUESTION 1

Patricia hired Contractor to build an addition to her home. During excavation, a safety inspector determined that the excavation violated statutory standards intended to protect workers from cave-ins. In response, Foreman shut down the work site.

Foreman stepped away from the work site to call his wife. Just then Stephen, who was Patricia's ten-year-old son, came home from school and climbed into the excavated hole. As he reached the bottom, he screamed as soil caved in around him and he was buried. Hearing the scream, Foreman grabbed a shovel, jumped into the hole, freed Stephen after several minutes of shoveling, found that his heart had stopped, and applied chest compressions to resuscitate him.

Stephen suffered a sprained ankle as a result of the cave-in and broken ribs as a result of the chest compressions.

1. What claims, if any, can Patricia reasonably bring on Stephen's behalf against Contractor? Discuss.
2. What claims, if any, can Patricia reasonably bring on Stephen's behalf against Foreman? Discuss.

## QUESTION 2

Ann was owed \$500 by Victor, a former boyfriend, who refused to pay her. She knew that he kept a large amount of cash at his house. She drove there late one night with a pistol tucked in her waistband to scare him into paying her.

When Ann arrived at Victor's house and rang the bell, he refused to let her in. She went around to the back of the house, broke a window in the back door, and let herself in. She confronted him in the living room and demanded the \$500.

Victor took \$500 from a desk drawer and crossed the room to Ann. But instead of handing her the money, he grabbed the gun from her waistband and pushed her away from him. He pointed the gun at her and said, "I think I will just shoot you and get you out of my hair permanently." He did not intend to shoot her, only to scare her.

Ann was frightened and lunged at Victor's arm. In the ensuing struggle, the gun fired, killing Victor. Ann picked up the \$500 and left. As she was speeding away, she struck and injured a bicyclist.

With what crimes, if any, can Ann reasonably be charged, and what defenses, if any, can she reasonably assert? Discuss.

### QUESTION 3

Sam decided to sell his interior design business in Town to Betty. While reviewing a purchase agreement drafted by Sam, Betty insisted on a covenant by Sam not to compete with her in the interior design business in Town for a period of two years. In response, Sam drafted the following proposed language on the last page of the purchase agreement:

“Sam hereby agrees that he will not perform interior design services in Town for a period of two years.”

Betty said: “That’s fine. I don’t want to have to compete with your ties to your former clients in Town.” Sam told Betty that he would revise the purchase agreement accordingly.

The following day, Sam sent Betty the original and one copy of the purchase agreement. Betty signed the original without reading it and returned it to Sam along with payment of the purchase price; she kept the copy. Sam never signed the purchase agreement.

Six months later, Betty learned that Sam had recently undertaken four large interior design jobs for clients who lived in Town. When she complained, he explained that, although the clients lived in Town, the jobs were on properties located outside Town. She reviewed her copy of the purchase agreement and discovered that it did not contain a covenant by him not to compete. Sam had mistakenly sent her an unrevised version of the purchase agreement.

1. Does the purchase agreement contain a covenant by Sam not to compete? Discuss.
2. Is the purchase agreement enforceable? Discuss.
3. Assuming the purchase agreement contains a covenant by Sam not to compete and is enforceable, did Sam violate the covenant? Discuss.

## QUESTION 4

Cathy regularly fed neighborhood cats. As a result, she had dozens of cats living around her property. Darla operated a daycare center next door for a number of two-year-olds, including Ethan and Frank. Darla repeatedly asked Cathy not to feed the cats, explaining that they frequently came onto her property, defecated and urinated in a sandbox, and might scratch one of the children. Cathy continued feeding the cats.

Learning that cats are repelled by the smell of ammonia, Darla poured ammonia into the sandbox.

The next day, Ethan was scratched by one of the cats that Cathy fed and sustained a serious injury as a result of an ensuing infection. Frank ate sand while playing in the sandbox and sustained a serious injury as a result of ingesting ammonia.

What is the likely outcome of a negligence claim brought by:

1. Ethan's parents against Cathy, on behalf of Ethan? Discuss.
2. Ethan's parents against Darla, on behalf of Ethan? Discuss.
3. Frank's parents against Cathy, on behalf of Frank? Discuss.
4. Frank's parents against Darla, on behalf of Frank? Discuss.